

IN THE HIGH COURT OF TANZANIA

(MAIN REGISTRY)

AT DAR ES SALAAM

MISCELLANEOUS APPLICATION NO. 2 OF 2018

FREE MEDIA COMPANY LIMITED.....APPLICANT

VERSUS

THE MINISTER FOR INFORMATION, CULTURE,  
ARTS AND SPORTS.....1<sup>ST</sup> RESPONDENT

THE DIRECTOR OF INFORMATION SERVICES  
DEPARTMENT (A.K.A THE REGISTRAR OF  
NEWSPAPERS.....2<sup>ND</sup> RESPONDENT

THE ATTORNEY GENERAL .....3<sup>RD</sup> REPSONDENT

23/08&05/10/2018

RULING

**MWANDAMBO, J.**

This is an application for leave to apply for judicial review made under rule 5(1), (2), (3) and (6) of the Law Reform (Fatal Accidents and Miscellaneous Provisions (Judicial Review Procedure and Fees) Rules GN No. 324 of 2014(the Rules) together with Section 18(1) and 19(3) of the Law Reform (Fatal Accidents and Miscellaneous) Provision Act, Cap 310[R.E. 2002] (the Act). As required by rule 5 (2) (a) of the Rules, a statement setting out the grounds in support of the application has been attached to the chamber summons together with an affidavit of Martin Malera, Managing Editor of Tanzania Daima Newspaper.

The facts giving rise to the instant application are as follows. The Applicant is a publisher of a Newspaper called Tanzania Daima. On 23<sup>rd</sup> October 2017, the Minister for Information, Culture, Arts and Sports(1<sup>st</sup> Respondent) by his letter of the same date issued a 90 days ban against the publication of Tanzania Newspaper following

four days before the expiry of the ban. Why the Applicant chose to wait until four days to the expiry of 90 days ban is beyond comprehension but what is clear is that most of the orders sought appear to have become long superfluous despite the contrary view taken by the learned Advocate for the Applicant responding to the submission made on behalf of the Respondents. The Honourable Attorney General through Ms. Consesa Kahendaguza, learned State Attorney submits that the application is overtaken by events because the impugned order is no longer in existence following expiry of the ban on 23<sup>rd</sup> January, 2018.

The learned Advocate for the Applicant thinks differently. He submits in essence that the fact that the ban has long expired does not mean that the decision was legally correct and so the Court should proceed to make a determination upon leave being granted. The learned Advocate takes the view that since the 1<sup>st</sup> Respondent's order was illegal, the Court should readily grant leave to apply for judicial review relying on **TANESCO and 2 Others vs. Salum Kabora**, Civil Application No. 68 of 2015 (unreported) and **Principal Secretary Ministry of Defence and National Service vs. Devram Vallambhia** [1992] TLR 185. With regard to the orders of prohibition and mandamus, the learned Advocate takes the view that the same can still be issued irrespective of the expiry of the ban because for instance, prohibition is intended to extend to prospective orders against the Applicant. To fortify his position, the learned Advocate refers to a book by Peter Kaluma titled, *Judicial Review, Law Procedure and Practice, Law Africa*, 2<sup>nd</sup> edition who says, inter alia the order looks to the future and is meant to contain or stop an anticipated event and is completely unavailable for a decision already made (at page 19). The learned Advocate makes a similar argument in relation to the order of mandamus whose aim is to compel the 1<sup>st</sup> Respondent to comply with the law in his dealings with the Applicant.

I have given due consideration to the submissions for and against the issue raised. There is no dispute that the application was triggered by the 1<sup>st</sup> Defendant's

learned Advocate has invited the Court to do will be tantamount to treating the Court as an academy of law rather than a Court of justice frowned upon by Abraham, C.J. (as he then was) in **Anthony Edward Cunning vs. Queen's Hotel** [1935] EACA 25 relied by this Court in **National Bank of Commerce Vs. Jackson Sinzobakwila** [1978] LRT n.39. In consequence, I entertain no doubt that granting leave to apply for judicial will serve any useful and practical purpose because the said orders are already overtaken by the events.

In the event the application for leave is hereby dismissed. Each party shall bear own costs. Order accordingly.

Dated at Dar es salaam this 5<sup>th</sup> day of October 2018

A handwritten signature in black ink, appearing to read 'L.J.S Mwandambo', is written over a circular stamp. The signature is somewhat stylized and overlaps the stamp.

L.J.S Mwandambo

JUDGE

05/10/2018